WP(C) 3233/1999
BEFORE
THE HON'BLE MR JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE HRISHIKESH ROY

IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

WRIT PETITION (C) NO.3233 OF 1999

Srimati Puspa Debnath
Wife of Sri Kumud Chandra Debnath
Village - Jalukbari, P.O. Jalukbari,
P.s. Khairabari, Dist. Darrang, Assam.

& & & PETITIONER

-Versus-

1. The Union of India,
Represented by the Secretary,
Home Affairs, New Delhi,

2. G.O.C.,
IV Core, Tezpur.

3. The Officer In Charge,
Goreswar Army Camp,
P.O. Goreswar, P.S. Goreswar,
District - Kamrup.

4. The State of Assam,
Represented by its Secretary,
Home Department,
Dispur, Guwahati - 6.

5. District Magistrate,
Kamrup at Guwahati.

6. The District Magistrate,
Darrang at Mangaldoi.

7. The Officer In Charge,
Goreswar Police Station,
P.O. Goreswar, P.S. Goreswar.

8. The Officer In Charge,
Khairabari Police Station,
P.O. Khairabari, Darrang.

& & &RESPONDENTS

P R E S E N T
HON'BLE MR. JUSTICE D. BISWAS, CHIEF JUSTICE (ACTING)

THE HON'BLE MR. JUSTICE HRISHIKESH ROY

For the Petitioner	:	Mr. S. Chouhan, Mr. A. Roy, Advocates.
For the respondents	:	Mr. D.C. Chakraborty, Central Govt. Counsel. Ms. B. Goyal, Govt. Advocate, Assam.
Date of hearing	:	19.01.2007
Date of Judgment and Order	:	19.01.2007

JUDGMENT AND ORDER

(Oral)

By D.Biswas, CJ (Actg.)

Heard Mr. S. Chouhan, learned counsel for the petitioner and also heard Mr. D.C. Chakraborty, learned Central Government Counsel and Ms. B. Goyal, learned Government Advocate, Assam.

2. This application under Article 226 of the Constitution has been filed for appropriate directions for investigation and payment of compensation for alleged custodial death of Kajal Debnath, son of the petitioner. The petitioner's case is that on 12.8.1998 while they were sleeping after taking meal at 7.30 P.M., 5/6 Army personnel came to their house and enquired about young boys. They directed the petitioner to call her sons. Accordingly, petitioner's two sons, namely Ujjal Debnath and Kajal Debnath came out. Immediately, the Army personnel took away Kajal Debnath. Around 9.30 P.M., a gun shot was heard from a distance of about 1 K.M. from their house. The petitioner could not conceive that her son Kajal was killed by the Army. The dead body of Kajal was handed over to Goreswar Police Station on 13.8.1998 at 2.P.M. The Officer-in-Charge of the police station informed Shri Kamal Rajbanshi, Gaonborah of Jalukbari village about the death of Kajal Debnath. The police held inquest on the dead body on 14.8.1998 and, the dead body was handed over to the family members on 15.8.1998 at 2 P.M. On this background, the writ petition has been filed for ordering enquiry to identify the guilty persons and for payment of compensation.

3. The respondents in their affidavit gave a different version of the occurrence. According to them, on receipt of specific information on 12th August, 1998 about the presence of seven armed BTF militants in village Singimari, who had confined Mr. Parshuram Pandiya, the manager of Krishna Tea Estate as hostage, they arrived in the village by 6.30 P.M. to apprehend the militants and to secure release of the captive Mr. P.R. Pandiya. On further information from local sources on the subject, the Army raided two isolated houses on the outskirts of the village Kawaimari at 9.30 P.M. The Army noticed one individual coming out from one of the house. At the site of the Army, the said individual fled towards the back side of the house. The Army also chased the individual covering a distance of approximately 20 metres. The said individual suddenly turned around and aimed a pistol towards the chasing party and attempted to open fire. The Army in retaliation and in self defence killed the militant. One .303 sophisticated pistol with one live round in the pistol and three live rounds in the clip were recovered from the militant. The militant was identified as Kajal Debnath of Village Jalukbari, District - Darrang, Assam. According to the respondents, Kajal Debnath was guarding Mr. Pandiya, the Manager of Krishna Tea Estate who after being

abducted was being held captive for ransom.

4. In view of the conflicting pleas advanced on behalf of the parties, this Court by the order dated 23.2.2005 directed the Additional District & Sessions Judge, Darrang to make an enquiry with regard to the circumstances leading to the death of Kajal Debnath and to submit his report within a period of four months.

5. The learned Additional Sessions Judge, in compliance with the direction given by this Court, held enquiry after notice to the parties concerned. During the course of enquiry, the learned Judge recorded the statements of witnesses produced by both the sides and submitted a report dated 8.9.2006 to this Court for appropriate orders. It may be mentioned here that no objection has been filed on the findings of the aforesaid enquiry report by either of the parties.

6. The report submitted after exhaustive discussion of the evidence of the witnesses and other materials collected during the course of enquiry, recorded the following findings :-

(i) Thus, it is clearly proved that on 12.0898 at about 9.30 P.M., while Kajal Debnath was guarding the kidnapped manager of Krishna Sushibini Tea Estate - Mr. P.R. Pandia in a house at village Kawaimari under Khairabari P.S., where he was kept as pawn for ransom by the Bengal Tiger Force activists after kidnapping him from his garden, the army of 13 JAKLI Army Camp at Goreswar consisting of Opp. Party witness No.1 - Lt. Col. P.K. Mishra (the then Major) and his rifle men and Havildars, raided the said house and then Kajal Debnath was running away looking the army there and then a firing took place and Kajal Debnath got killed in the firing, and one .303 hand made pistol and four live cartridges were recovered from him. .

(ii) Secondly, from the circumstances of this case and the evidence of opp. Party witness No.2, it is clearly proved that Kajal Debnath was a member of Bengal Tiger Force terrorist, who kidnapped him from his garden and kept him in their custody for ransom.

(iii) Concluding above discussion, I hold that Kajal Debnath was a member of Bengal Tiger Force terrorist in the year 1998, and on 12.8.98 at about 9.30 p.m. the army personnel of 13 JAKLI Army Camp, Goreswar raided a house at village Kawaimari under Khairabari P.S. in search of kidnapped manager of Krishna Sushibini Tea Estate, Mr. P. R. Pandia and in that house Bengal Tiger Force activists kept the said manager as pawn for ransom and Kajal Debnath was guarding Mr. R.P. Pandia at that time, and looking the army party he started to run away towards South and the army personnel killed him by firing on him. .

7. The learned Additional Sessions Judge, as it appears from the report, did not find enough evidence to justify the case of the Army that there was an encounter. But, he has recorded his satisfaction from the evidence made available by the parties that Kajal Debnath was a member of a militant group and, at the time of his death, he was guarding the kidnapped Manager of Krishna Tea Estate. At the sight of the Army approaching the house, he attempted to flee and was shot dead by the Army. The report also shows that there is no evidence to show that Kajal Debnath had fired at the Army from the pistol in his possession. Despite this deficiency in the report, we are satisfied with the positive findings recorded by the learned Additional Sessions Judge that the deceased Kajal Debnath belongs to a terrorist group and was engaged in guarding the kidnapped Manager. We are also satisfied with the report to the effect that Kajal Debnath started running away from the place as soon as he saw the Army approaching towards the house and, to prevent him, the Army had to open fire resulting in his death.

8. Mr. Chouhan, learned counsel for the petitioner placed before th is Court for consideration a decision of the Apex Court in Malkit Singh, Petitio ner -Vs.- State of U.P., Respondents, reported in AIR 1999 SC 1522 and argued th at the ratio available in the aforesaid decision may also be followed in the ins tant case in awarding compensation.

9. The factual matrix of the case cited by the learned counsel has a marked difference with the facts of the case at hand. In the case before the H on'ble Supreme Court, the deceased was taken into custody by the police while he was travelling in a bus. What happened thereafter, and the manner in which the encounter took place, could not be explained by the police or by the investigati ng agency or by the Additional Chief Judicial Magistrate who had conducted the e nquiry. In that context, the Hon'ble Supreme Court directed payment of compensat ion, particularly because of the fact that the deceased was in the custody of th e police. The situation here is completely different as has been found in the en quiry report dated 8.9.2006. In our considered opinion, the judgment relied upon by the learned counsel is of no assistance in the instant case.

10. In the result, we find no merit in this Writ Petition and the sa me is dismissed. No costs.

JUDGE CHIEF JUSTICE (ACTING)

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